

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILLIAM A. STUTZNER,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No. 07-10075

Hon. Gerald E. Rosen

Magistrate Judge R. Steven Whalen

**ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on March 10, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

On November 28, 2007, Magistrate Judge R. Steven Whalen issued a Report and Recommendation ("R & R") recommending that the Court grant in part and deny in part Plaintiff William A. Stutzner's motion for summary judgment, and likewise grant in part and deny in part the Defendant Commissioner of Social Security's motion for summary judgment. In particular, the Magistrate Judge recommended that the decision of the Administrative Law Judge ("ALJ") be affirmed as to Plaintiff's ineligibility for Disability Insurance Benefits, but that a portion of the ALJ's decision be set aside in order to avoid a potential — and, in the Magistrate Judge's view, unwarranted — *res judicata* effect upon

any claim that Plaintiff might pursue in the future for Supplemental Security Income benefits.

Neither party has filed any objections to the R & R. Upon reviewing the R & R, the parties' cross-motions, and the record as a whole, the Court concurs in the thorough and careful analysis of the Magistrate Judge, and adopts the R & R in its entirety.

Accordingly,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's November 28, 2007 Report and Recommendation is ADOPTED as the opinion of this Court. IT IS FURTHER ORDERED that, for the reasons stated in the R & R, Plaintiff's motion for summary judgment is GRANTED IN PART and DENIED IN PART, and Defendant's motion for summary judgment also is GRANTED IN PART and DENIED IN PART. In accordance with these rulings, the Administrative Law Judge's decision is

AFFIRMED with respect to Plaintiff's ineligibility for Disability Insurance Benefits, but is VACATED with respect to the finding that Plaintiff was "not under a 'disability' as defined in the Social Security Act, at any time through the date of the decision," July 13, 2006. (Admin. Record at 25, ¶ 13.)

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: March 10, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 10, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager